

Criminal Law Symposium

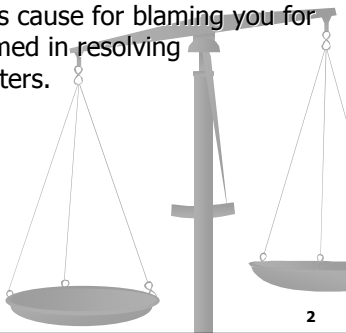
Jury Management Session

Hon. Marianne Battani, US District Court, ED, Detroit
Hon. William J. Giovan, 3rd Circuit Court, Detroit
Hon. Richard Ryan Lamb, Circuit Court, Kalamazoo



Preliminary Matters

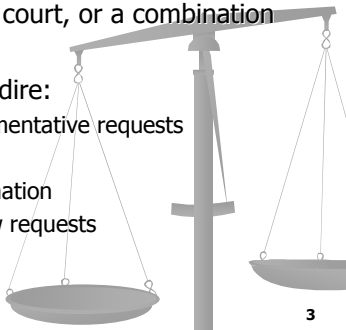
- Don't give jurors cause for blaming you for the time consumed in resolving preliminary matters.



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Voir Dire

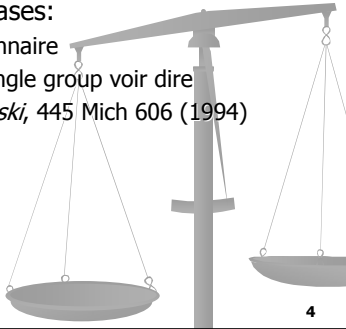
- By counsel, the court, or a combination
- Content of voir dire:
 - Eliminate argumentative requests
 - Juror hardship
 - Personal information
 - Substantive law requests



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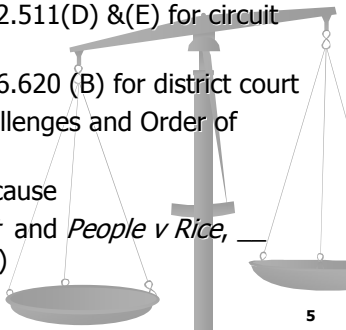
Voir Dire - continued

- High Publicity cases:
 - Special questionnaire
 - Individual or single group voir dire
 - *People v Tyburski*, 445 Mich 606 (1994)



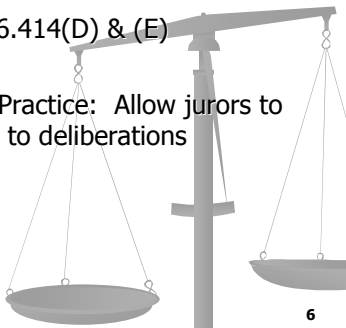
Juror Challenges

- Amended MCR 2.511(D) &(E) for circuit court
- Amended MCR 6.620 (B) for district court
- Peremptory challenges and Order of Exercise
- Challenges for cause
- *People v Knight* and *People v Rice*, ___ Mich ___ (2005)



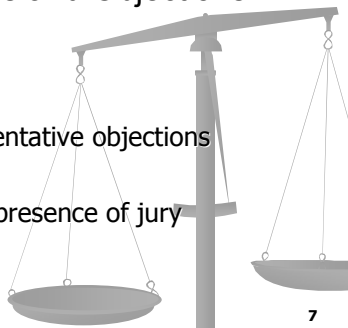
Juror Notetaking and Questions from Jurors

- Amended MCR 6.414(D) & (E)
- Recommended Practice: Allow jurors to take their notes to deliberations



Managing the Examination of Witnesses and Objections

- MRE 611
- Avoiding argumentative objections
- Rulings outside presence of jury



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Handling Evidence in the Presence of the Jury

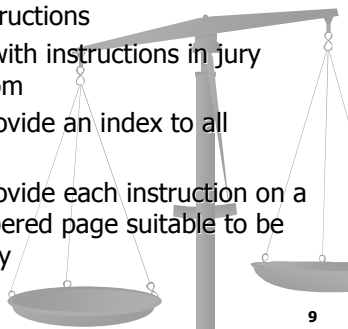
- Common issues and best practices



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Instructing the Jury

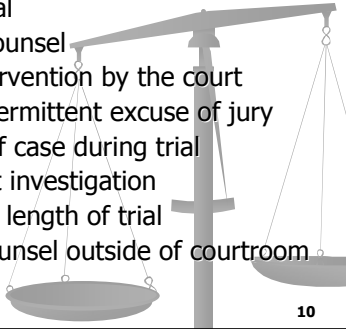
- Preliminary instructions
- Provide jurors with instructions in jury deliberation room
- Attorneys to provide an index to all instructions
- Attorneys to provide each instruction on a separate, numbered page suitable to be given to the jury



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Preliminary Instructions

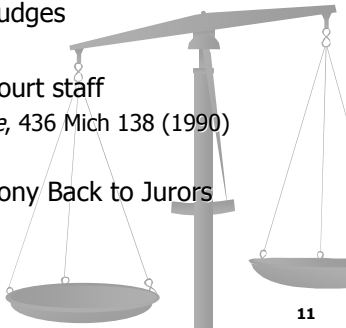
- Sequence of trial
- Objections of counsel
- Sua sponte intervention by the court
- Reasons for Intermittent excuse of jury
- No discussion of case during trial
- No independent investigation
- Court schedule, length of trial
- Contact with counsel outside of courtroom
- Juror questions



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Juror Communications During Deliberations

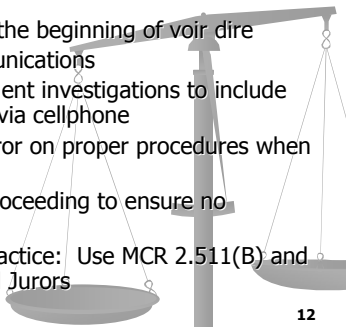
- Guidelines for Judges
- Guidelines for court staff
 - *People v France*, 436 Mich 138 (1990)
- Reading Testimony Back to Jurors



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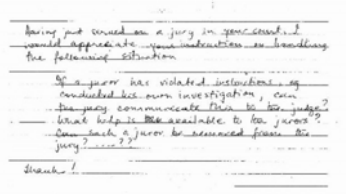
Juror Misconduct: Guiding Jurors on Appropriate Procedures

- Instruct jurors at the beginning of voir dire
- Cell phone communications
- Defining independent investigations to include internet research via cellphone
- Instructing the juror on proper procedures when concerns arise
- Conducting the proceeding to ensure no impropriety
- Recommended practice: Use MCR 2.511(B) and 6.411 – Additional Jurors



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Juror Misconduct: Guiding Jurors on Appropriate Procedures



Note reads:

Having just served on a jury in your court, I would appreciate your instruction on handling the following situation

If a juror has violated instructions, e.g. conducted his own investigation, can the jury communicate this to the judge? What help is available to the jurors? Can such a juror be removed from the jury? . . . ??

Thanks!

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Juror Misconduct: Guiding Jurors on Appropriate Procedures

■ Proposed MCJI:

"During your deliberations you may not communicate with persons outside the jury room (other than the Judge), by any means, including cellular telephones or other electronic devices."

■ Suggest language to replace first phrase: "During your jury service..."

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Juror Misconduct: Guiding Jurors on Appropriate Procedures

■ Proposed MCJI continued:

"If you discover a juror has violated my instructions, you should report it to me."

■ Suggest adding the word "immediately" at the end of the above sentence.

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Jury Management Resources

- National Center for State Courts resources:
http://www.ncsconline.org/WCDS/Topics/topic1.asp?search_value=Jury%20Management
- NSC Jury Management Documents:
http://www.ncsconline.org/WCDS/Pubs/pubs1.asp?search_value=
- ABA Jury Project:
www.abanet.org/juryprojectstandards/principals.pdf
- SCAO Jury Management Manual:
http://courts.mi.gov/scao/resources/publications/manuals/carg/rq_sec12.pdf
- Lucci, *The Case for Allowing Jurors to Submit Written Questions* 16 JUDICATURE 89 (July/August 2005)

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Jury Management

- Session Wrap Up and Evaluation

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